

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION
4

5 ANTONIO MOORE,

6 Plaintiff,

7 CASE NO. C-1-02-0430

8 KROGER COMPANY, et al., :

9 Defendants. :

10 - - -

11 The Deposition of ANTONIO
12 PRENTIS MOORE taken by the defendants as
13 upon cross-examination, pursuant to the
14 Ohio Rules of Civil Procedure and pursuant
15 to agreement by counsel as to the time and
16 place and stipulations hereinafter set
17 forth, at the offices of Schroeder,
18 Maundrell, Barbieri & Powers, 11935 Mason
19 Road, Suite 100, Cincinnati, Ohio, at
20 10:00 a.m. on Wednesday, the 2nd day of
21 April, 2003, before Margaret M. Lynch,
22 Registered Professional Reporter, a Notary
23 Public within and for the State of Ohio.
24
25

1 A. The Kroger's at Kinnard off of
2 Mitchell Avenue.

3 Q. And how long would you say you did
4 your banking at Fifth Third at this
5 particular branch leading up to June 21st
6 of 2001?

7 A. I really don't recall.

8 Q. Was it a number of years?

9 A. At least eight years. I really
10 don't recall.

11 Q. Did you conduct your banking
12 business there on a regular basis?

13 A. Define regular, please.

14 Q. Well, like every Thursday or once a
15 week or every day at such-and-such a time
16 or something like that?

17 A. Yes.

18 Q. What sort of regular basis would
19 you conduct your business there?

20 A. A minimum of two to three times a
21 week.

22 Q. And when you would go, what would
23 you do, just make a deposit of cash?

24 A. Yes, cash and checks.

25 Q. Back in June, what day of the week

1 Q. For clarity, this Kroger employee
2 also includes the police officer.

3 A. No.

4 Q. Just people like management at the
5 Kroger store, the check-out people, the
6 cashiers, the people at the service
7 counter, the baggers and people like that,
8 had you had any -- had you had any -- I'm
9 not exactly sure how to define problem. I
10 guess what I'd ask you is other than with
11 Cincinnati police officers that might have
12 been working a detail at the Kroger, prior
13 to June 21st, 2001, did you have any bad
14 experiences, if you will, at the Kroger
15 store?

16 A. Nothing unusual, no.

17 Q. Prior to June 21st, 2001, did you
18 have any reason to believe that any Kroger
19 employee had any ill will or malice
20 towards you?

21 A. No.

22 Q. Prior to June 21st, 2001, did you
23 think that you had done anything while at
24 the Kroger store to have prompted any
25 Kroger employee to have any bad feelings

1 as to you?

2 A. No.

3 Q. Prior to June 21st, 2001, were you
4 aware of anyone being arrested for parking
5 in this particular spot? And when I say
6 that, I'm talking about the police car
7 only reserved spot out in front of the
8 store.

9 A. No.

10 Q. Based on your recollection, was
11 there anything written on any of the signs
12 around this parking spot that indicated
13 that if someone parked there, they would
14 be towed?

15 A. No.

16 Q. Was there anything that indicated
17 anyone that parked there would be
18 arrested?

19 A. No.

20 Q. Was there anything in the store or
21 any sign on the store inside or out that
22 would indicate anything of that nature;
23 that is, that if anybody parked their
24 vehicle in those particular two spots -- I
25 guess there were two spots?

1 A. That's what I understand, yes.

2 Q. That's what the officer said last
3 week.

4 A. Yes.

5 Q. That if someone parked in one of
6 those spots, either their car would be
7 towed or they would be arrested?

8 A. No.

9 Q. So, it sounds like it would be fair
10 to say that prior to June 21st, 2001, you
11 had no reason to believe any Kroger
12 employee -- and I'm not including
13 Cincinnati police officers that might be
14 working on a detail -- had any ill will or
15 malice towards you?

16 A. That's correct.

17 Q. Do you recall with respect to the
18 sign or signs at these two spots that
19 talked about police cars only are to park
20 here, if they said police cars as opposed
21 to Kroger security or Kroger cars? Do you
22 recall specifically what they said?

23 A. I don't recall specifically what
24 they said.

25 Q. Okay. Do you remember anything

1 indicating that the spots were for Kroger
2 security?

3 A. I do not remember seeing anything
4 that said Kroger security.

5 Q. I want to talk about Officer McNeil
6 and other uniformed Cincinnati police
7 officers that may have been working on
8 details on times that you visited this
9 store. Had you had any -- I'll call it
10 dealings with Officer McNeil prior to this
11 day?

12 A. Could you define dealings, please?

13 Q. Any times when you and he came in
14 contact, either you said something to him
15 or he said something to you?

16 A. Yes.

17 Q. Tell me about before this day what
18 I've called dealings or conversations or
19 comments that either one of you might've
20 made to one another?

21 A. On at least one previous occasion,
22 he indicated that I could not park my
23 truck in that location.

24 Q. What kind of truck was this? Is it
25 a pickup truck?

1 other police officers told you you
2 couldn't park there?

3 A. At least one.

4 Q. At least one time?

5 A. Yes.

6 Q. And can you describe that police
7 officer?

8 A. No, I can't.

9 Q. Was he white or black, or do you
10 recall?

11 A. I believe it was a white officer.
12 I don't really recall.

13 Q. And what did that officer tell you?

14 A. To simply -- this is -- I'm
15 paraphrasing because I don't remember
16 exactly, but this is supposed to be for
17 police cars or police officers, I believe
18 was his word. I really don't remember,
19 but something to that effect.

20 Q. And did you respond?

21 A. No, I didn't.

22 Q. When Officer McNeil told you on one
23 prior occasion that you were not supposed
24 to park there, what was his demeanor, if
25 you will?

1 A. Relaxed.

2 Q. Relaxed. Just matter-of-factly,
3 you're just not supposed to park here,
4 that sort of thing?

5 A. Yes.

6 Q. You said okay basically and got in
7 your truck and left --

8 A. Yes.

9 Q. -- on that occasion? Did you have
10 any belief or feeling that -- strike
11 that. Other than your personal
12 observations and dealings with Officer
13 McNeil, do you have any information from
14 any other sources about him; that is,
15 people that you know or friends that you
16 have or anyone else that has had any
17 dealings with him? Have you spoken to
18 anybody about Officer McNeil?

19 A. No.

20 Q. If my memory is correct, Officer
21 McNeil also graduated from Western Hills,
22 did he say?

23 A. I don't recall.

24 Q. But you didn't know him from
25 school?

1 start to count the money and stop or
2 anything like that?

3 A. No.

4 Q. Did you notice any Kroger employees
5 outside the store in this area at the time
6 you got out of your truck and Officer
7 McNeil made this first comment to move the
8 truck?

9 A. No.

10 Q. And when you said, "Officer, I need
11 to make a deposit," you may or may not
12 understand what I mean, but did you say it
13 with any sort of attitude or sarcastically
14 or in any way, or did you matter-of-factly
15 make the statement?

16 A. As I would in a normal tone of
17 voice, I made the statement.

18 Q. And then what response did he have
19 to that?

20 A. He said, "Move the truck, or go to
21 jail."

22 Q. And what was your response?

23 A. "I'm just going in for a minute if
24 you have to give me a ticket or tow it,
25 but I need to make the deposit."

1 Q. And where was he located, and where
2 were you when you made that statement?

3 A. He was closer to me and the truck.

4 Q. Where were you in relation to your
5 truck at that point?

6 A. Near the parking spot, near the
7 sign in the parking lot.

8 Q. To speak with you from where he was
9 located on the sidewalk in front of the
10 store, would he have to yell?

11 A. No. He approached me as I exited
12 the truck.

13 Q. Okay. And so, when you had this
14 conversation where he said, "Move the
15 truck," and you said, "Officer, I need to
16 make a deposit," and he said, "Move the
17 truck or go to jail," and you said, "If
18 you have to give me a ticket or tow it,
19 okay, but I need to make a deposit," where
20 were you two located then? You were by
21 your truck still?

22 A. We were closer to the center of the
23 little street -- little traffic thruway
24 there.

25 Q. Were you out in where cars drive?

1 A. At this point, we were -- as I
2 exited, again, he's -- he started to
3 approach me. And when I got out of the
4 truck, I was walking directly into
5 Kroger's, towards Kroger's. I didn't make
6 it to even the sidewalk when we were
7 talking.

8 Q. So, both of you were off the
9 sidewalk?

10 A. Yes.

11 Q. The street in front of the sidewalk
12 there?

13 A. Approximately the fire lane at that
14 point.

15 Q. Do you have any information that
16 Kroger directed Officer McNeil to make the
17 statement that you said he made, which is,
18 "Move the truck or go to jail"?

19 A. Do I have any?

20 Q. Do you have any information that
21 Kroger directed him to make a comment --

22 A. No.

23 Q. -- a statement like that? All
24 right. So after you said, "I really need
25 to make this deposit. Either give me a

1 ticket or tow it," what happened then?
2 What did he say?

3 A. He said, "Move it or --" it was the
4 same conversation. And I repeated, "If
5 you need to, Officer, please tow it or
6 give me a ticket."

7 Q. And what did he say after that?

8 A. He said, "You're going to jail."

9 Q. How long did this conversation last
10 from the first time he said, "Move the
11 truck," until he said, "You're going to
12 jail"?

13 A. No longer than three minutes.

14 Q. Do you know of any witnesses to
15 this conversation other than the two of
16 you?

17 A. Yes.

18 Q. Who?

19 A. Abdul Berry.

20 Q. Is this someone you knew before
21 that day?

22 A. No.

23 Q. Where was he located when you were
24 having this conversation with Officer
25 McNeil?

1 Q. Did you ever raise your voice
2 during the conversation you had with him?

3 A. No.

4 Q. Now, you said that the officer
5 said, "You're under arrest"? Is that what
6 you said he said?

7 A. He said, "You're going to jail."

8 Q. And did you have a comment to him
9 after that? Did you say anything to him
10 after that?

11 A. No.

12 Q. And what, if anything, did he do at
13 that point after he said, "You're going to
14 jail"?

15 A. He called on his radio.

16 Q. On his personal radio on his
17 shoulder there?

18 A. Yes.

19 Q. Did you hear what he said?

20 A. No.

21 Q. Did he put you in cuffs?

22 A. No.

23 Q. Did he hold on to you?

24 A. No.

25 Q. You never walked into the store

1 that day?

2 A. No.

3 Q. Other police cars arrived?

4 A. Yes.

5 Q. I know I'm jumping back a little
6 bit here. Were both of these police spots
7 open?

8 A. Yes.

9 Q. Where did the other -- were there
10 two police cars that arrived after he
11 said, "You're going to jail," or you tell
12 me?

13 A. There was one police car.

14 Q. Okay. And where did it park?

15 A. Approximately right in front of the
16 door, Kroger's door, in the fire lane.

17 Q. And who was in that vehicle, do you
18 know?

19 A. Officer Schulte, and I don't
20 remember the other officer's name.

21 Q. Officer Schulte is white?

22 A. That's correct.

23 Q. The other officer is what race?

24 A. He's African-American.

25 Q. Now, there was a lieutenant that

1 was involved, Bly?

2 A. Yes.

3 Q. Did he come to the store while you
4 were there before you were taken away?

5 A. Yes. I requested the officers
6 contact their supervisor.

7 Q. Before we get to the supervisor
8 then, what happened when Officer Schulte
9 and the other officer arrived?

10 A. They asked me to move the truck.

11 Q. And what did you say?

12 A. "If you could, give me a ticket or
13 tow it."

14 Q. What time would you say they
15 arrived?

16 A. It was probably five after eight or
17 so.

18 Q. Was your impression that if you
19 moved the truck, you would not be arrested
20 and not be given a ticket or what?

21 A. That's what they said, if I moved
22 the truck -- when I was in the back of the
23 police car, they said, "Just move the
24 truck, and we won't have to do this."

25 Q. Who said that?

1 truck."

2 Q. And what was your response to that?

3 A. I told him that, again, if he
4 needed to, to give me the ticket or tow
5 it.

6 Q. Anything else that you said to him?

7 A. I don't recall anything else.

8 Q. But when Officer Schulte arrived,
9 your impression was that the bank was
10 probably closed?

11 A. Yes.

12 Q. And you wouldn't be able to make a
13 deposit at that point that night?

14 A. Yes.

15 Q. Have you ever made for your
16 business a night deposit into a night
17 deposit box?

18 A. No, never.

19 Q. At the point when Officer Schulte
20 arrived, why didn't you move your truck or
21 just go home in your truck?

22 A. Because Officer McNeil said that I
23 was being arrested.

24 Q. All right. Well, was your
25 impression when Schulte said, "Move the

1 Q. When Schulte asked you to move the
2 truck, was there anybody preventing you
3 from moving the truck?

4 A. No.

5 Q. Did the other police officer ask
6 you to move the truck?

7 A. Lieutenant Bly?

8 Q. No, the other police officer we're
9 not sure of the name?

10 A. I don't recall.

11 Q. Do you remember any conversation
12 you had with him during the course of the
13 evening?

14 A. I don't remember. I think he was
15 pretty quiet.

16 Q. So, when Schulte put on the cuffs,
17 were you injured in any way as he was
18 putting on the handcuffs?

19 A. Not during the arrest, no.

20 Q. You weren't resisting or anything
21 like that?

22 A. No.

23 Q. You weren't put against the wall or
24 on the ground or anything like that?

25 A. No.

1 Q. Did they cuff you behind your back?

2 A. Yes.

3 Q. And they put you in which vehicle?

4 A. Schulte's vehicle.

5 Q. In the backseat?

6 A. Yes.

7 Q. And you asked -- was it Schulte to
8 have his supervisor come to the store?

9 A. I believe that I did request that
10 after Schulte arrived.

11 Q. After Schulte arrived, did you have
12 any other conversations with McNeil?

13 A. No.

14 Q. And as I understand it, you don't
15 have any recollection of hearing any
16 conversation that McNeil had with Schulte
17 or the other officer or Lieutenant Bly?

18 A. No. When Lieutenant Bly arrived, I
19 was in the back of Schulte's vehicle.

20 Q. You were already cuffed and in the
21 vehicle when Bly arrived?

22 A. Yes. That's correct.

23 Q. And Bly came up to the cruiser to
24 speak with you?

25 A. That's correct.

1 Q. Was the window open?

2 A. If it wasn't, they rolled it down.

3 Q. And what did Lieutenant Bly say to
4 you?

5 A. "Just move the truck, and this will
6 all go away."

7 Q. And what was your response to that?

8 A. I said, "I'm already arrested and
9 in the back of a vehicle, in an officer's
10 vehicle."

11 Q. Did you say anything else?

12 A. No.

13 Q. Why did you not move the truck when
14 Lieutenant Bly said that, "If you move the
15 truck, all of this will go away"?

16 A. I didn't understand why I was in
17 the car.

18 Q. Would it be fair to say that you
19 understood from his statement that if you
20 moved your truck that you would not be
21 continued to be arrested; that is, you
22 would be taken out of the cruiser and the
23 cuffs would be taken off; you would move
24 your truck, and you were free to go? Was
25 that your understanding of Lieutenant

1 BLY's statement?

2 A. I understood him to say that if I
3 moved the truck, then all of this would go
4 away.

5 Q. And I guess I'm taking it one step
6 further. By him saying, "This will all go
7 away," did that mean to you -- did you
8 understand that you would be taken out of
9 the cruiser, the cuffs would be taken off,
10 and you were free to go home if that's
11 where you wanted to go?

12 A. But that's not what he told me.

13 Q. Well, what was your understanding
14 of what he meant by, "This will all go
15 away"?

16 A. I didn't take it any way.

17 Q. You didn't?

18 A. No.

19 Q. It didn't occur to you that that
20 meant you would be free to go without
21 being processed or arrested?

22 A. It may have been, but I don't
23 understand, again, why I was in the
24 cruiser for parking in that spot.

25 Q. If you understood -- if you had

1 understood from Lieutenant Bly by his
2 statement, "Just move the truck, and this
3 will go away," that that meant that you
4 would be taken out of the cruiser, cuffs
5 would be taken off, and you were free to
6 leave to go home or wherever you wanted,
7 would you have done that?

8 A. No.

9 Q. Why not?

10 A. Because I don't believe that the --
11 what I had been subject to at that point
12 was legal.

13 Q. And what were you going to do about
14 it? What decision did you make to do
15 about it at that point? Did you make a
16 decision?

17 A. No.

18 Q. So, you wanted the arrest to
19 continue?

20 A. Well, in that they had already
21 arrested me, that there had been the
22 public humiliation of me being there in
23 handcuffs in front of the Kroger's, then I
24 felt that at that point that process had
25 gone much further than it should have.

1 Q. And what did you intend to do about
2 that because of the process going further
3 than it should have?

4 A. Following normal procedures where
5 you think you've been wronged, I was going
6 to contact an attorney.

7 Q. Didn't you think that you could
8 contact an attorney from your home that
9 night or the next day without having to go
10 to the police station?

11 A. To say that I had been falsely
12 arrested?

13 Q. Right.

14 A. Not if I weren't arrested.

15 Q. Okay. I thought you said in your
16 understanding, you were already arrested?

17 A. That is correct. But if I
18 understood your question that if I were at
19 home, I wouldn't be arrested.

20 Q. Okay. So, you wanted them to take
21 you down and process you, take you down to
22 the station?

23 A. If they had arrested me, I felt
24 that was the right thing to do.

25 Q. It was the right thing for you to